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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

To: The Commission

REPLY COMMENTS OF TRIBUNE BROADCASTING COMPANY

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REPLY COMMENTS OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company ("Tribune"), the corporate parent of eight commercial television stations, hereby submits its reply to the Comments filed in response to the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding.[1]

INTRODUCTION & SUMMARY

In its initial Comments submitted in response to the FNPRM, Tribune urged the Commission to permit independent, over-

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[1] Tribune is the corporate parent of seven independent commercial television stations: WPIX(TV), New York, New York; WGNO(TV), New Orleans, Louisiana; WGN-TV, Chicago, Illinois; KWGN-TV, Denver, Colorado; KTLA(TV), Los Angeles, California; WLVI-TV, Cambridge, Massachusetts; and WPHL-TV, Philadelphia, Pennsylvania. In addition, through another subsidiary, Tribune owns WGNX(TV), Atlanta, Georgia, which became the CBS affiliate in the Atlanta market in 1994.

the-air, television broadcasters to meet the increased competitive threat from horizontally integrated, national cable programmers by:

1. eliminating entirely the national station ownership cap and immediately increasing the national audience reach limit to 35 percent while retaining the so-called UHF discount;
2. increasing the audience reach limit to 50 percent after one year; and
3. permitting local duopolies where at least one of the stations broadcasts on a UHF channel.

Tribune demonstrated that these proposed changes would permit independent television broadcasters to meet fairly the competitive challenge of horizontally integrated, national cable network programmers who have largely been free to launch additional channels with the same administrative, promotional and distributional infrastructure.[2] Tribune's comments illustrated that these multi-channel efficiencies -- efficiencies that are currently unavailable to independent, over-the-air television broadcasters -- made national cable network programmers an

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[2] Tribune's initial Comments illustrated how the largest cable MSOs, Time Warner, TCI and Cablevision Systems, have integrated their increasingly larger horizontal systems -- and the cable homes they access -- vertically into significant equity positions in many basic cable networks. This strategic vertical integration has enhanced the ability of certain established cable network programmers to launch new programming channels by ensuring substantial nationwide clearances over the cable systems of their MSO partners. See "Turner Movie Channel Packs 'Em In," Broadcasting & Cable, April 17, 1995, at 26 (aided by the ability to clear the cable systems of its partial MSO owners, TCI and Time Warner, Turner Broadcasting projects that Turner Classic Movies will be profitable only one year after launch).

increasing competitive threat to independent broadcasters for viewing audiences, advertising revenues and the most popular syndicated programming and movies.[3]

Tribune accordingly urged the Commission to make the changes highlighted above to ensure the ability of independent, over-the-air broadcasters to compete fairly for the most popular syndicated off-network series and motion pictures, programming that allows them to provide free, over-the-air entertainment, news, children's and public affairs programming that the Commission has recognized is vital to the public interest. Tribune's comments also demonstrated that by permitting local duopolies involving at least one UHF station, the Commission would increase both competition and viewpoint diversity in local markets by permitting experienced broadcasters to strengthen relatively weak UHF stations.[4]

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[3] In particular, Tribune illustrated that independent television broadcasters, supported only by advertising revenue, are finding it increasingly difficult to compete with horizontally integrated cable networks, supported by increasing advertising revenues and subscriber fees, for the most popular syndicated programming and movies. Tribune argued that as basic cable networks increased their national reach and buying power with more and more channels, syndicators of the most popular off-network series and motion pictures have and increasingly will bypass independent stations and sell their product directly to cable networks, actions which severely devalue the product.

[4] Specifically, Tribune noted that local duopolies would permit over-the-air television broadcasters to realize significant economies of scale, estimated between 15-25 percent of the operating budgets of two stand alone stations, economies that could be used to improve the competitive positions of relatively weak UHF stations. Tribune also argued that local duopolies would increase viewpoint diversity because a duopoly owner would (continued...)

Tribune's reply comments will respond to several arguments made in the initial round of comments filed in response to the FNPRM. Specifically, this reply will argue that the Commission should retain the UHF discount in whatever national ownership rule it adopts and permit local duopolies involving at least one UHF station. Next, the reply illustrates that dedicated, large group owners like Tribune have and will continue to enhance viewpoint diversity in ways that single station owners cannot in this increasingly competitive multichannel environment. The reply concludes by urging the Commission to permit local duopolies in markets with at least four independently owned commercial television stations and to increase its national audience cap gradually, as proposed by Tribune, rather than immediately as proposed by various commentors in this proceeding.

RETAINING THE UHF DISCOUNT AND PERMITTING DUOPOLIES INVOLVING UHF STATIONS

In its initial comments filed in response to the FNPRM, Post-Newsweek Stations, Inc. ("Post-Newsweek") argued that "[i]n today's marketplace, the difference between ownership of UHF and VHF stations is not significant enough to justify discounting UHF stations for competitive and diversity purposes." Comments of Post-Newsweek at 7. In support thereof, Post-Newsweek noted that

[4] (...continued)
have every incentive to diversify its two stations in order to attract the largest overall viewing audience in a market.

"[s]ome UHF stations are owned by one of the national broadcast networks and most are highly competitive in their markets." Id.

Tribune submits that this argument ignores the economic realities in today's marketplace. The recent wave of affiliation switches -- 68 stations in 33 markets -- and the resulting reported increase of over $250 million in annual affiliate compensation costs are perhaps the best illustration that there is still a significant gap between UHF and VHF stations. See "Perelman didn't mean to start a revolution," Broadcasting & Cable, April 17, 1995 at 49 (describing affiliation switches). The unmistakable dynamic behind these transactions was the attempt by all four networks to expand and/or preserve their existing VHF affiliates.[5]

Moreover, Post-Newsweek's argument ignores some fundamental facts about the economic status of a large number of independent UHF stations across the country. Between 1980 and 1994, the number of commercial, largely independent UHF stations grew from 218 to 584, an increase of approximately 167 percent. Review of Commission's Regulations Governing Programming

[5] Post-Newsweek's argument also ignores the recent rating results experienced by CBS following the spate of affiliate switches. In Milwaukee, Atlanta and Cleveland, CBS switched from a VHF station to a previously unaffiliated UHF station and experienced prime time ratings declines ranging between 35-50 percent for all television households and between 26-46 percent for viewers aged 18-54. These results illustrate that an audience acceptance gap still exists today between UHF and VHF stations, an acceptance gap that even the demonstrated popularity of network programming could not overcome.

Practices of Broadcast Television Networks and Affiliates, FCC 95-254 at Appendix C (released June 15, 1995) ("Network Affiliate Rule Making"). Although the Commission authorized them with the hope of increasing local competition, many of these commercial, independent UHF stations have been anything but competitive.

While the number of independent commercial television stations across the country increased dramatically between 1980 and 1994, the combined audience share of independent stations remained virtually flat during substantially the same period and actually declined when the results of the formerly independent Fox affiliates are excluded from the numbers.[6] By contrast, the basic cable networks' total-day audience share increased an astounding 253 percent in cable homes and 371 percent among all television households in this same period.[7] This declining combined overall audience share for independent commercial

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[6] The combined total-day audience share for independent television stations in 1983 was 18 in cable homes and 18 for all television households compared to a combined total-day audience share of 18 in cable homes and 22 in all televisions households in 1994. Cable TV Advertising, Paul Kagan Associates, Inc., February 28, 1995, at 4. The combined audience share for independent stations include results for stations that are now affiliates of the Fox Network, which obviously did not exist in 1983. When the audience results for the Fox affiliates are excluded from these aggregate numbers, it is clear that the remaining independent stations have actually experienced an aggregate ratings decline over the same period.

[7] The basic cable networks' total-day audience share in cable-homes has grown from a 15 (7 in all television homes) in 1983 to an overall total-day audience share of 38 in all cable homes (26 in all television households) and a 22 share during prime time in cable-homes in 1994. Cable TV Advertising, Paul Kagan Associates, Inc., February 28, 1995, at 4.

television stations despite a substantial increase in the number of viewing outlets vividly illustrates that many independent, primarily UHF stations are not even remotely competitive in their local markets, failing to capture any significant audience share or corresponding advertising revenue. See Comments of the Association of Independent Television Stations, Inc., ("INTV") at 24-27, including Tables 1 & 2 (UHF independent television stations "had an extraordinarily difficult time during the period of rapid cable expansion," including six straight years of aggregate losses (1985-1991)).

A significant audience acceptance gap still exists in the marketplace between UHF and VHF stations, a gap that was the driving force between the recent flurry of affiliation switches and that is illustrated in the stagnant audience share for independent stations despite the substantial increase in the number of independent outlets. Tribune respectfully submits that the UHF discount properly recognizes the significant competitive differences between UHF and VHF stations and has encouraged broadcasters to make the required commitment of both time and money to make these UHF stations more competitive -- a result that serves viewers, advertisers and the Commission's own diversity policies. For these reasons, Tribune strongly urges the Commission to retain the so-called UHF discount in whatever national ownership rule it implements.[8]

Moreover, given the non-competitive status of many independent commercial UHF stations, Tribune submits that the Commission should permit local duopolies involving at least one UHF station. Such a rule will allow experienced broadcasters to strengthen weaker UHF stations and thereby achieve the goal sought by the Commission when its originally authorized these stations -- increasing local competition. Without such action, Tribune submits that many of the independent, UHF stations will be relegated to bystander status in this increasingly competitive market and will eventually be forced off the air.[9]

OUTLET DIVERSITY AND VIEWPOINT DIVERSITY

A number of commentors, including the Network Affiliated Stations Alliance, the AFLAC Broadcast Group, Post-

[8] Alternatively, if the Commission decides to eliminate the UHF discount, Tribune strongly urges the Commission to grandfather the discounted status for current owners. Such a result would prevent substantial and inequitable business disruptions and marketplace distortions.

[9] Such a result threatens the Commission's own public interest policies because, as recognized in this very proceeding, over-the-air television broadcasters have far more public interest and diversity obligations than their multichannel competitors. Additionally, as discussed in the next section, if the Commission does not permit local duopolies, many of these independent UHF stations will never develop the economic foundation necessary to invest in the kind of local news and public affairs programming the Commission sought to develop by preserving outlet diversity.

Newsweek, the Television Operators Caucus, Inc. and the Black Citizens for a Fair Media, et al., have urged that the Commission not expand the national audience reach limit beyond its current 25 percent threshold. A number of these same groups have also urged that the Commission not permit the common ownership of two television stations in a local market. In support of these positions, those commentors argue that any change to the Commission's ownership rules will reduce viewpoint diversity by reducing the number of separately owned television outlets.

Tribune submits that the underlying assumption behind this argument -- that only separately owned television outlets will serve the needs and interests of a local community -- ignores overwhelming evidence to the contrary. In its initial comments, Tribune highlighted a number of instances in which it committed millions of dollars into various local markets to develop the kind of local news and public affairs programming that the Commission acknowledged was its primary objective in promoting outlet diversity. See FNPRM ¶ 72 ("our core concern with respect to diversity is news and public affairs programming especially with regard to local issues and events.").[10]

These programs included the launch of the first-ever local news broadcast on its UHF station in Atlanta, the

[10] See also FNPRM ¶ 66 n.93 ("When we talk about diversity, we generally are referring to diversity in the presentation of news and public affairs programming.").

development of a successful morning news program in Los Angeles, and the creation and development of a variety of local programming on its UHF station in New Orleans. Although currently successful, these local programs, in particular the local news broadcast in Atlanta, required a considerable start-up investment (nearly $1.5 million for the Atlanta news broadcast) and continuing capital infusion (totaling nearly $2.4 million for the Atlanta news broadcast) until they developed an audience.[11]

Without the resources generated by Tribune's group ownership and its willingness to commit these resources to creating this type of programming, however, none of this "core" programming would have been possible. Accordingly, Tribune reiterates its view that committed group owners contribute to viewpoint diversity in ways that no single station owner can.

Moreover, the underlying assumption that preserving separately owned television outlets is essential to ensure real "viewpoint diversity" ignores the economic realities of over-the-air television broadcasting. Individually or small-group owned stations, regardless of their intentions, cannot support the kind of "core" local news and public affairs programming sought by the Commission without an economic base that permits an investment in

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[11] Tribune submits that the comments of the Black Citizens for a Fair Media are simply wrong in asserting that "the notion that ownership concentration contributes to view point diversity is not supported by any empirical evidence." Comments of Black Citizens for a Fair Media, et al., at 9-10.

this kind of programming. Developing such an economic base has become increasingly difficult for individually or small-group owned stations, especially independent stations, in light of the competitive challenge presented by the cable industry discussed above. This competition will only increase with the development and expansion of DBS, MMDS and VDT.[12]

For these reasons, Tribune submits that one of the best ways to develop additional "core" local news and public affairs programming lies in committed large group owners with the experience, expertise and resources needed to develop the economic foundation to permit meaningful investments in this type of programming. Tribune further submits that over-the-air television broadcasters will emphasize and enhance their local programming and service components as a way to differentiate their product in the multichannel environment, provided the Commission acts to permit them to compete fairly in today's marketplace. For these reasons, Tribune urges the Commission to relax both its local and national ownership rules as proposed to ensure that the American public receives more of the high-quality news and public affairs programming it has come to expect from independent group owners like Tribune.

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[12] As an example of the likelihood of increased competition, the Commission itself recognized that demand for DBS equipment already exceeds supply. Implementation of Section 19 of the Cable television Consumer Protection Act of 1992, 9 FCC Rcd 7442, 7475 (1994) ("1994 Video Competition Report"). Moreover, the one millionth DSS system (the system necessary to receive DBS service) was shipped in April 1995. Satellite Business News, May 10, 1995, at 1, 30.

IMPLEMENTING THE PROPOSED OWNERSHIP CHANGES

Local Ownership Rule: Westinghouse Broadcasting Company supported a relaxation of the local ownership rule to permit the common ownership of a UHF and a VHF station (or two UHF stations) in the top-25 markets only. Westinghouse Comments at 24, 28-30. A number of other commentors, including CBS, Inc., National Broadcasting Company, Inc. and CapitalCities/ABC, Inc. have supported co-ownership of television stations in the same market only a case-by-case basis when an applicant can demonstrate that a proposed combination is in the public interest. See, e.g., Comments of CBS, Inc. at 55-57.

Tribune submits that these comments underestimate the state of competition in local markets in part by calculating market concentration statistics (the so-called Herfindahl-Hirschman Index) that count local cable operators as the equivalent of one television station.[13] The average cable home receives, in addition to six over-the-air commercial television stations, over thirty cable channels, including a variety of basic cable networks, pay cable services and pay-per-view offerings. Review of the Prime Time Access Rule, FCC 94-123, Notice of Proposed Rule Making ¶ 18 n.30, p. 11 (released October

[13] See "An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-ownership Rules," Economists Incorporated, Volume 1 at 15-17 (submitted on behalf of Capital Cities/ABC, Inc., CBS, Inc., National Broadcasting Company, Inc. and Westinghouse Group W).

24, 1994). As illustrated above, cable subscribers have increasingly taken advantage of these options -- in 1994, basic cable networks collectively received an overall total-day audience share of 38 in all cable homes (26 in all television households), representing a total-day audience share increase of 253 percent in cable homes and 371 percent among all television households from 1983. Cable TV Advertising, Paul Kagan Associates, Inc., February 28, 1995, at 4.

Based on the demonstrated competitiveness of the basic cable networks, Tribune urged in its initial Comments that, rather than counting all the channels of an entire cable system as the equivalent of one television station, the Commission include each available basic cable network in its analysis of local markets that: (a) provides video programming reasonably similar to that provided by over-the-air broadcasters and (b) sells advertising. Although individual basic cable networks typically do not attract the audience of even the weakest over-the-air television station,

> [i]t is the presence of these alternative delivery systems and their ability rapidly to take dissatisfied viewers away from broadcast television that is important, not their present scale of operations. Further, the fact that these alternative media are not available to each and every TV household in a given viewing area does not mean that they provide ineffective competitive restraints on broadcasters. Broadcasters cannot discriminate between those viewers who have and those who do not have competitive alternatives. Hence, those viewers who do have competitive alternatives, if sufficient in number, protect the interests of those who do not.

"An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules," Economists Incorporated, Volume 1 at 11 (comments submitted on behalf of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Westinghouse Group W). Tribune submits that the number of viewers with competitive alternatives are sufficient in number to justify counting each reasonably equivalent cable channel in the Commission's local market analysis. With this change alone, the concentration statistics supporting the comments of the three established networks and Westinghouse would be considerably lower.

Moreover, as noted recently by the Commission, there are 103 Designated Market Areas (DMAs) across the country with five or more commercial television stations, 76 of which have six or more commercial stations. Network Affiliate Rule Making, supra, at Appendix B. These statistics alone support a change permitting local duopolies well beyond the top-25 markets. When considered in combination with the proposal to include reasonably equivalent basic cable networks, these statistics clearly support an explicit provision in the rules permitting duopolies in markets with at least four independently owned commercial television stations.

Tribune submits that such a change would permit robust competition between the affiliates of the four established networks while, at the same time, permitting experienced broadcasters to achieve significant economies of scale and improve the competitive position of the remaining independent stations in the market. See supra note 4. These local duopolies will also increase the prospects for the successful launch of new networks by improving the economic foundation of the remaining available affiliates. For these reasons, Tribune urges the Commission to permit local duopolies in markets with at least four separately owned commercial television stations.

National Ownership Rule. CBS, Inc., National Broadcasting Company, Inc., CapitalCities/ABC, Inc. and Fox Television Stations, Inc. all support the immediate repeal of both the station ownership cap and the audience reach limit. They argue that neither portion of the rule can be justified in light of the technological changes that have developed a wide array of video distribution alternatives. See, e.g., Comments of CBS, Inc. at v, 37-41.

Although Tribune supports the immediate repeal of the numerical ownership cap, Tribune respectfully submits that the Commission should increase the audience reach limits gradually to 35 percent initially and 50 percent within one year. Such action would allow the industry to adjust to this structural change in an orderly, rationale process.

A gradual increase in the permitted audience reach would also give the Commission time to reevaluate and eliminate other provisions in its rules that currently restrict or limit television station ownership. The elimination of these other rules would even the playing field among television broadcasters.

For example, Tribune submits that the newspaper-television cross-ownership prohibition should be reevaluated and eliminated as soon as legally permissible. As demonstrated in Tribune's initial Comments, joint ownership of television stations and newspapers presents a remarkable opportunity to improve and enhance the quality of local news and public affairs programming by using the resources of a local newspaper to improve/enhance the information broadcast on television. For these reasons, Tribune urges the Commission to revise its audience reach limit gradually to 35 percent initially and 50 percent within one year.

CONCLUSION

Without action by the Commission in this proceeding permitting free, over-the-air broadcasters to meet the competitive challenge of the cable industry and other multichannel providers head-on, the continued competitiveness of over-the-air television with its attendant public interest commitments and related benefits is in considerable doubt. For these reasons, Tribune urges the Commission to amend its ownership rules as proposed to provide independent over-the-air broadcasters like Tribune the opportunity to continue providing the highest-quality, free, over-the-air television service into the twenty-first century.

Respectfully submitted,

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